

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 1680

INTRODUCER: Governmental Oversight and Productivity Committee and Government Efficiency Appropriations Committee

SUBJECT: Public Documents

DATE: March 23, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gilreath</u>	<u>Johansen</u>	<u>GE</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Current law requires agencies to survey addresses on its publication mailing lists biennially to determine if recipients want to continue receiving copies of agency publications. If a recipient fails to reply to the survey by a date certain, that recipient is removed from the mailing list. SB 1680 modifies this process by requiring agencies to provide recipients in the survey with notice of whether a publication is available on the agency's website and by requiring agencies to give recipients the option of receiving publications via e-mail in lieu of hard copies.

Current law also requires certain state entities to furnish the Division of Library and Information Services of the Department of State 35 copies of each public document issued meeting the definition in s. 257.05, F.S. These documents are for deposit in the State Library and for distribution to depository libraries throughout the Florida. The division is authorized to request an additional 15 copies each. The bill requires these entities to submit to the division a record of any publication meeting the definition in s. 257.05, F.S., including publications on an agency website. The bill also clarifies what types of documents are subject to the written justification requirement for publications with costs exceeding \$50,000 required in s. 283.31, F.S., by linking that section to the definition of public document in s. 257.05, F.S.

This bill amends the following sections of the Florida Statutes: 257.05, 283.31, and 283.55.

II. Present Situation:

State agencies perform many activities that involve providing information to the public. These include such efforts as distributing information on health care risks and available services, notifying the public and affected groups about changes in regulatory standards, announcing the

availability of grants and funding opportunities, and releasing data and annual reports. This communication helps ensure that the public is informed of what government is doing and the services that are available. State agencies historically have communicated this information largely through printed documents. Several statutes relate to the cost and distribution of these publications.

- Section 283.31, F.S., requires executive branch agencies to maintain records for every agency publication with production costs exceeding \$50,000. Specifically, agencies are to document the purpose and justification for these publications and the sources of funding used for their production, and they are to compare the costs of different printing methods and justify the decision to print the documents in-house, by another agency, or by the private sector.
- Section 283.55, F.S., requires agencies to biennially survey addressees on agency publication mailing lists to determine whether they wish to continue receiving publications. Addressees must respond to continue receiving publications by mail and thus to remain on the agency mailing list. This provision does not apply to universities or to an agency whose mailing list consists only of persons registered with or licensed by the agency where payment of the registration fee makes that person a subscriber to agency publications.
- Section 257.05, F.S., requires agencies to submit copies of their public documents, as defined in this section,¹ to the Division of Library and Information Services of the Department of State for deposit in the State Library and for transmittal to depository libraries throughout the state.

In November 2005, OPPAGA issued Report No. 05-53, *State Printing Expenditures Have Decreased, But Additional Steps Could Produce More Savings*, November 2005, which examined how much agencies are spending to produce and distribute public documents and whether existing statutory provisions are effective in managing these costs. OPPAGA's findings included:

- Statewide printing expenditures have decreased. Over the past eight years, statewide printing expenditures have been reduced by about 25% from \$27.9 million in Fiscal Year 1997-98 to \$20.7 million in Fiscal Year 2004-05. Most of these expenditures (80%) were funded from various trust funds and federal grants; however, the remaining 20% (\$4.05 million) were supported from general revenue.²
- Agencies are not consistently justifying publications exceeding the statutory cost threshold, as required by s. 283.31, F.S. The effectiveness of this control on agency printing is limited

¹ Section 257.05(1), F.S., defines the term "public document" to mean any document, report, directory, bibliography, rule, newsletter, pamphlet, brochure, periodical, or other publication, whether in print or nonprint format that is paid for in whole or in part by funds appropriated by the Legislature and may be subject to distribution to the public; however, the term excludes publications for internal use by an executive agency as defined in s. 283.30, F.S. Section 283.30(1), F.S., defines "agency" to mean any official, officer, department, board, commission, division, bureau, section, district, office, authority, committee, or council, or any other unit of organization, however designated, of the executive branch of state government, and the Public Service Commission.

² FLAIR does not facilitate the separation of expenditures for public documents from expenditures for other printed products. Consequently, these expenditures include both internal documents (e.g., stationery, training materials, and administrative forms), as well as external documents designed to communicate with the public such as reports, newsletters, and brochures. Expenditures also include specialty products such as registration decals for motor vehicles.

because the statute does not define the term “publication,” and agencies have interpreted this term differently. In addition, the statute does not provide a mechanism for monitoring compliance with the documentation requirements.

- Mailing list maintenance requirements specified in s. 283.55, F.S., do not encourage electronic distribution of public documents. Although most agencies conduct purges of their mailing lists, publication recipients are not asked whether they would prefer an electronic version of an agency publication, as the statute does not provide for this alternative.
- Agencies are not submitting all public documents to the State Library, as required by s. 257.05, F.S. This requirement is intended to facilitate ready public access to state publications. Agencies, however, are not consistently complying with this statute for several reasons, including a lack of knowledge among agency staff about the statutory requirement, differing interpretations regarding what documents need to be submitted, and the State Library’s lack of authority to monitor and enforce compliance.

OPPAGA’s report identified several policy options for consideration by the Legislature, including:

- Updating chs. 257 and 283, F.S., to require agencies to use electronic document distribution to the maximum extent practicable to help clarify statewide policy regarding public documents. The policy should require agencies, when conducting biennial mailing list purges, to ask recipients if they would prefer to receive publications electronically in lieu of hard copies; which would likely increase electronic distribution.
- Requiring agencies to submit an annual list of all published documents meeting the definition in s. 257.05, Florida Statutes, to the State Library to aid it in ensuring that it receives copies of all public documents for transmittal to depository libraries throughout the state.
- Clarifying what types of documents are subject to the written justification requirement for publications with costs exceeding \$50,000, and requiring agencies to report these justifications annually in their legislative budget requests.

III. Effect of Proposed Changes:

Section 1: Requires agencies to submit an annual list of all published documents meeting the definition in s. 257.05, F.S., including publications on an agency website, to the Division of Library and Information Services of the Department of State to ensure that the State Library receives copies of all public documents for transmittal to depository libraries throughout the state.

Section 2: Amends s. 283.31, F.S., to clarify what types of documents are subject to the written justification requirement for publications with costs exceeding \$50,000.

Section 3: Amends s. 283.55, F.S., to require agencies, when conducting biennial mailing list purges, to ask recipients if they would prefer to receive publications electronically in lieu of hard copies.

Section 4: Provides an effective date of July 1, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

The bill modifies the annual survey process of recipients of agency publications. As part of this process, agencies must advise recipients whether their publications are available on their websites and whether the recipient would like to receive copies via e-mail. The bill provides on the survey form a place for a recipient to identify his or her e-mail address. This e-mail address would be available to a requestor upon a public records request. It should be noted that the current street or post office box mailing address of a recipient of an agency publication also could be obtained by a public records request.

Another bill filed during the 2006 regular legislative session would make e-mail addresses held by an agency exempt from public records requirements.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Requiring agencies to submit an annual list of all published documents required to be submitted to the State Library may result in an increased number of documents housed in the State Libraries and designated depository libraries.

Clarifying what types of documents are subject to the written justification requirement for publications may increase the number of examinations of this process by state agencies, which could result in increased efficiencies or cost-savings in terms of the publication process.

Requiring agencies to ask recipients if they would prefer to receive publications electronically in lieu of hard copies would likely increase electronic distribution, which would result in cost savings to agencies in terms of reduced publication and distribution costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the definition of “public record” contained in the Public Records Act, whether a record is in paper form or is electronic or digital is irrelevant to its status as a public record. Further, the Public Records Act encourages agency use of electronic recordkeeping. Agencies provide increasing amounts of information through their agency websites. The Department of State, Division of Library and Information Services, has published retention schedules by rule, as authorized by the Legislature, to ensure that hard copies and electronic or digital copies are preserved. While electronic records are public records, it may not be explicitly clear that the annual list of public documents required to be submitted to the division must include public documents that are electronic or digital, as well as those that are published in traditional formats. It may be appropriate to clarify that the annual list of publications includes electronic or digital publications that are placed on an agency website.

This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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